



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Ave., NW
Washington, DC 20530

(202) 252-1000

MEMORANDUM

DATE: October 3, 2011

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS

FROM: /s/
Norman Wong
Deputy Director,
Counsel to the Director

SUBJECT: Small Business Fraud

ACTION REQUIRED: Information only.

The Small Business Administration (SBA) recently asked the Department of Justice to co-sign a letter to the heads of federal agencies, encouraging the agencies to pursue procurement fraud involving small business. After some discussion, we agreed upon the language below, which the SBA is now sending to the federal agencies. Accordingly, we encourage you to consider carefully referrals from federal agencies of this type of fraud for criminal or civil prosecution consistent with your office guidelines and the Principles of Federal Prosecution.

On behalf of the U.S. Department of Justice (DOJ) and the U.S. Small Business Administration we wish to make you aware of powerful new tools available across the Government to ensure integrity in Federal procurements involving small business.

On September 27, 2010, the President signed into law the Small Business Jobs Act of 2010 (SBJA). It amended the Small Business Act (Act) to enhance DOJ's ability to prosecute individuals and small business concerns (SBC) that commit fraud when seeking contracts, subcontracts, grants, cooperative agreements, or cooperative research and development agreements that are set-aside, reserved, or intended for award to SBCs.

The SBJA established a presumption of loss to the United States equal to the total amount expended on a contract (or other vehicle) whenever a concern willfully seeks and receives an award intended for SBCs by misrepresentation. Second,

any submission of a bid or proposal for an award intended for SBCs is now deemed to be an affirmative, knowing, and intentional certification of small business size or status. Third, the statute requires the signature of an authorized official on the same page where the concern represents its size and status (15 U.S.C. § 632(w)). In addition to these new provisions, the Act already provided that misrepresentation of size or status may result in a fine of up to \$500,000 or imprisonment for not more than 10 years, or both, along with program fraud civil remedies (31 U.S.C. § 3801-3812), and/or suspension or debarment (15 U.S.C. § 645(d)).

The DOJ will, as appropriate, include the above guidance in its legal resources on prosecuting small business size and status fraud. We encourage your agency's contracting personnel and Office of Inspector General to investigate and pursue vigorously small business fraud. The DOJ is also sending this letter to all of the United States Attorneys around the country urging them to consider carefully for prosecution referrals of small business fraud.

We hope the SBJA will be of great assistance to your agency in preserving the integrity and continued viability of small business programs. We thank you for your assistance and support in this most important matter.

cc: All United States Attorneys' Secretaries



October 2011

MEMORANDUM FOR: CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES
OFFICES OF SMALL & DISADVANTAGED BUSINESS
UTILIZATION
INSPECTORS GENERAL

FROM:

H. Marshall Jarrett

H. Marshall Jarrett

Director

Executive Office for United States Attorneys

Karen G. Mills

Administrator

US Small Business Administration

SUBJECT:

Investigation and Prosecution of Small Business Size
Misrepresentation – copy of a letter sent to all Agency Heads

On behalf of the Department of Justice and the Small Business Administration (SBA) we wish to make you aware of powerful new tools available across the government to ensure integrity in federal procurements involving small businesses.

On September 27, 2010, the President signed into law the Small Business Jobs Act of 2010 (SBJA), Public Law No. 111-240. Section 1341 of the SBJA amended the Small Business Act to enhance the Department of Justice's ability to prosecute individuals and concerns that commit fraud when seeking contracts, subcontracts, grants, cooperative agreements, or cooperative research and development agreements set aside, reserved or intended for award to small business concerns.

First, the SBJA established a presumption of loss to the United States equal to the total amount expended on a contract (or other vehicle) whenever a concern willfully seeks and receives an award intended for small business concerns by misrepresentation. Second, any submission of a bid or proposal for an award intended for small business concerns is now deemed to be an affirmative, knowing and intentional certification of small business size or status. Third, the statute requires the signature of an authorized official on the same page where the concern

represents its size and status. 15 U.S.C. § 632(w). In addition to these new provisions, the Small Business Act already provided that misrepresentation of size or status may result in a fine of up to \$500,000 or imprisonment for not more than 10 years, or both, along with program fraud civil remedies (31 U.S.C. §§ 3801-3812), and/or suspension or debarment. 15 U.S.C. § 645(d).

The Department of Justice will, as appropriate, include the above guidance in its legal resources on prosecuting small business size and status fraud.

We encourage your agency's contracting personnel and Office of Inspector General to investigate and pursue vigorously small business fraud. The Small Business Administration is eager to assist you and your personnel in such efforts. The Department of Justice has also sent this guidance to the 93 United States Attorneys, urging them to consider carefully for prosecution referrals of small business fraud.

We hope the SBJA will be of great assistance to your agency in preserving the integrity and continued viability of small business programs. We thank you for your assistance and support with this important matter.